

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 696 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

MADHUBEN BHAGWANJIBHAI DESAI

Versus

MAGANLAL JAGVINBHAI DESAI

Appearance:

MR. ASHISH M. DAGLI FOR MR YOGESH S LAKHANI for
Petitioner
Respondents No. 1, 2 served.

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 08/10/1999

ORAL JUDGEMENT :

1. Petitioner, who is the original plaintiff, has filed this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908, challenging the judgment and order dated March 16, 1995, passed by the learned Civil Judge (J.D.), Dhoraji, in Regular Civil

Suit No. 264 of 1991. The learned Trial Judge rejected the Application - Exhibit 86 filed by the petitioner original plaintiff for production of document.

2. The petitioner - plaintiff filed Regular Civil Suit No. 264 of 1991 for a declaration and permanent injunction against the respondents from interfering with the possession of the plaintiff described in Para-5 of the plaint, which is the exclusive possession of the plaintiff. It was further prayed by way of mandatory injunction that the respondents be directed to open the lock, which they have put on the suit property.

3. The respondents had filed written statement and on pleading of the parties, necessary issues were framed by the Trial Court. It is borne out from the record of the case that during the deposition of the plaintiff, Application - Exhibit 86 was filed, to produce the Adoption Deed dated 20.5.1988, on which the right of ownership of the plaintiff was based in the suit property. On the said application, learned advocate for the respondents had made an endorsement that the Adoption Deed, was sought to be produced at a belated stage, has already been mentioned in the suit, but, in spite of that fact, which was not produced along with the plaint and now plaintiff has tried to produce the same at the belated stage and, therefore, the respondents had strong objection to the production of the same.

4. Learned Civil Judge (JD), Dhoraji, by order dated March 15, 1995, dismissed the Application for production of the document, which has given rise to filing of the present Civil Revision Application.

5. Learned Advocate for the petitioner has vehemently submitted that the Adoption Deed dated 20th May, 1988, was referred to in the plaint and the plaintiff had based her suit on the basis of very document, but due to bona fide mistake on the part of her advocate, the same could not be produced along with the plaint. Learned counsel for the petitioner further submitted that the plaintiff had made out a good case for production of the Adoption Deed and, therefore, the Trial Court ought to have permitted the production of the same at belated stage. Learned counsel for the petitioner further vehemently submitted that if a document is sham or bogus or concocted, the same could not be permitted to

produce. It is submitted by the learned counsel for the petitioner that in the present case, it was not the case of the respondents that the document, which was sought to be produced, was concocted, sham or bogus. Learned counsel for the petitioner vehemently submitted that at the most by permitting the production of the document, the court could have imposed costs on the petitioner. The learned counsel for the petitioner in support of his submission, placed reliance on the decision of this Court in the case of SAIFUDDIN MOSINALI vs. VORA RAJABALI TAIYABALI, reported in 1983 (1) GLR 91. Finally, it was submitted by the learned counsel for the petitioner that the Trial Court had erred in not exercising its jurisdiction vested in it, which has resulted into grave injustice to the plaintiff, and it is a fit case for this court to exercise its discretion under Section 115 of the Code of Civil Procedure and to allow the Civil Revision Application.

6. Respondents are duly served but, they have neither appeared nor engaged any advocate to contest the Civil Revision Application. 0.13 R.1 of the Code of Civil Procedure though prescribed that all the documents should be produced at the first hearing of the suit. As per the provisions of Rule 2 of Order 13 of the Code, the late production of a document can be allowed if the party has able to show a good cause for its late production. The word "good cause", in my opinion, should be liberally construed. The Adoption Deed, which is sought to be produced at a belated stage, was not produced due to some bona fide mistake on the part of the plaintiff or her advocate. The suit of the plaintiff was based on the Adoption Deed dated May 20, 1988. Due to some inadvertence, the document could not be produced, and if, the plaintiff had shown good cause for late production, the Trial Court ought to have permitted the plaintiff to produce the document even at the belated stage.

7. In SAIFUDDIN MOSINALI's case (*supra*), it is reiterated that the object of 0.13 R.1 of the Code of Civil Procedure is to see that the evidence is produced at the earliest. That this Rule is intended to secure speedy and orderly conduct of the suit. It was further observed that this provision is to be construed liberally so as to advance the cause of justice, it cannot be urged

that even if no good cause is shown for late production, it must be permitted on payment of cost. In view of the principle laid down in SAIFUDDIN MOSINALI's case (*supra*), in my opinion, the trial court ought to have permitted the production of Adoption Deed by imposing some costs on the plaintiff. The respondent had not raised any objection, such as, the document was not genuine or concocted but had merely placed technical objection that it was produced at a belated stage. When the plaintiff had made out a good cause for not producing the Adoption Deed before the framing of issue, the Trial Court ought to have exercised its discretion of permitting the plaintiff to produce the document.

8. As a result, for the foregoing discussion, in my opinion, this Civil Revision Application deserves to be allowed. The order of the learned Civil Judge (JD), Dhoraji, dated 16th March, 1995, below Exhibit 86 is quashed and set aside. The Application - Exhibit -86 is allowed and the plaintiff is permitted to produce the document i.e. the Adoption Deed dated May 20, 1988. Rule is made absolute. There shall be no order as to costs.

p.n.nair